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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/923,629 | 08/07/2001 | Gerhard Wollmann | C 2272 COGG | 2062 |

23657 7590 07/15/2003

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| EXAMINER |
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BADIO, BARBARA P

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| ART UNIT | PAPER NUMBER |
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1616

DATE MAILED: 07/15/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/923,629

Applicant(s)

WOLLMANN ET AL.

Examiner

Barbara P. Badio, Ph.D.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 13-31 is/are rejected.
- 7) ☒ Claim(s) 10-12 and 32 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____
- ☐ Interview Summary (PTO-413) Paper No(s). ____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other:

Final Office Action on the Merits

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 103

2. The rejection of claims 10-12 and 32 under 35 USC 103(a) over Hunt et al. ('252) and Hunt ('669) in combination is withdrawn.
3. The rejection of claims 1-3, 6-9 and 13-31 under 35 USC 103(a) over Hunt et al. ('252) and Hunt ('669) in combination is maintained.

Applicant argues the prior art does not teach a process for producing sterols wherein a first transesterification is performed under **mild conditions**. Applicant's argument was considered but not persuasive for the following reasons.

According to the instant claims, the first transesterification is done by "transesterifying the partial glycerides with a lower alcohol in the presence of a basic catalyst under **mild transesterification conditions** to form fatty acid alkyl esters and glycerol". However, the instant claims lack definition of what "**mild transesterification conditions**" are and, thus, are read to include any transesterification condition, including those taught by Hunt.

The examiner notes the present specification discloses specific conditions considered by applicant to be "mild conditions" (see page 6, section 0026). Although,

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the claims are read in light of the specification, limitations disclosed in the specification are not read into the claims. Therefore, as indicated above, the first transesterification step as recited by the instant claims includes conditions taught by the cited prior art.

For these reasons and those given in Paper No. 8, the rejection of claims 1-3, 6-9 and 13-31 under 35 USC 103(a) over Hunt et al. ('252) and Hunt ('669) in combination is maintained.

4. The rejection of claims 4 and 5 under 35 USC 103(a) over Hunt et al. ('252) and Hunt ('69) in combination as applied to claim 1 above, and further in view of Hernandez et al. ('423) is maintained.

Applicant's argument and the examiner's response are as discussed above in #3.

For these reasons and those given in Paper No. 8, the rejection of claims 4 and 5 under 35 USC 103(a) over Hunt et al. ('252) and Hunt ('69) in combination as applied to claim 1 above, and further in view of Hernandez et al. ('423) is maintained.

Claim Objections

5. Claims 10-12 and 32 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Telephone Inquiry

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Barbara P. Badio, Ph.D. whose telephone number is 703-308-4595. The examiner can normally be reached on M-F from 7:30am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on 703-308- 2927. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4556 for regular communications and 703-308-4556 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1235.

Barbara Padio
Barbara P. Badio, Ph.D.
Primary Examiner
Art Unit 1616

BB
July 14, 2003